7 Phil. 381

[G.R. No. 3069. January 23, 1907]

VIOLA BADGER, PLAINTIFF AND APPELLANT, VS. THE NEW YORK LIFE INSURANCE COMPANY, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

On July 5, 1902, William H. Badger made out a written application for a policy of insurance upon his life for $5,000 in favor of his wife, Harriet Viola Badger. The first premium on this policy amounted to $312.50. Badger sent the application and $297.60 to R. E. Herdman, who received the application and the money on the 9th of July, 1902.

Herdman sent the papers on July 24 to the office of the defendant company in Shanghai, where they were received on August 11. Badger executed a promissory note for $14.90, the balance of the first premium, which was sent to Herdman on July 17, 1902. On the 31st of July, Mrs. Badger, acting for her husband, sent to Herdman $14.90, cash, in payment of said note. Badger died on the 1st day of August, 1902, of cholera. No policy was ever issued upon his application.

The plaintiff brought this action to recover the sum of $5,000, alleging that a contract of insurance had been made by the company with Badger. Judgment was rendered in the court below in favor of the defendant to the effect that no such contract was ever made, from which judgment the plaintiff appealed.

The only person who acted in any way for the company in this transaction was Herdman. The only evidence in the case to show what his powers were is found in an admission in the answer which states that he was “a special agent and cashier of the defendant company in Manila,” and in his evidence, testifying as a witness, he said that at the time of the trial on September 6, 1905, he was the agency director of the defendant company in the city of Manila.

The action can not be maintained unless the plaintiff proves a contract between the company and Badger, made by a person authorized to act for the company. The authority of this person must, of course, be proven. There is no evidence in the case to show that Herdman had any authority to make any contract, either parol or in writing, that would bind the company. There is no evidence to show that he had any policies in his possession.

Nor is there any evidence that Herdman ever undertook to make any parol contract with Badger for this insurance. There had been some correspondence between the parties prior to the making of the application on July 5. On that day Herdman, writing to Badger in regard to the medical examination, said:

> "I will send you an official receipt when your remittance reaches the office, and then a new examination will not be necessary when the policies are delivered; otherwise this would be necessary."

After Badger had received the receipt of Herdman for the money sent to him and on July 11, he wrote to Herdman, saying:

> "Yours of the 9th instant received. Is the receipt you sent official or not? I do not wish to take another examination, and so desire an official receipt.
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> * * * * *
>
> "Shall I be obliged to wait until you receive an answer from the office in New York, or do you have authority to issue policies at the Manila office?
>
> * * * * *
>
> "If my application is accepted does insurance begin July 5, 1902 ?"

In reply to this letter, Herdman, on July 15, wrote, saying:

> "The receipt I sent you is official, being signed by me as cashier and not personally, and of course there will not be another examination required.
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> * * * * *

> "We issue an interim policy from our Shanghai office, which stands until the definitive policy comes from New York. We hope soon to have an advisory board here in Manila, so that we will be entirely free from Shanghai, all our other business being transacted directly with the home office at New York.
>
> "If your examination is acceptable, your policy will date from July 5, the date of your application."

This evidence shows conclusively that there was no parol agreement between the parties that the insurance had commenced on July 5, 1902. In fact, the claim of the appellant reduced to its lowest terms is that the mere signing of an application for life insurance and the payment of a first premium, without any parol agreement as to when the insurance shall commence, constitutes a contract between the parties binding from that date. Such a contention as this can not be sustained.

Moreover, there is evidence in the case in addition to that already referred to, showing that the company expressly refused to be bound until the application had been accepted either by its office in Shanghai or its office in New York. In the application which Badger signed on the 5th day of July it is said:

> "I agree, on behalf of myself and of any person who shall have or claim any interest in any policy issued under this application, as follows: That inasmuch as only the officers at the home office of the company in the city of New York have authority to determine whether or not a policy shall issue on any application, no statements, etc., shall be binding on the company."

In the report of the medical examiner there is found this printed statement:

> "The examiner is requested to send direct to the company in New York City any information which, for any reason, he prefers not to embody in this report. He can also mail this report direct to the company if he prefers."

Herdman testifies that when he sent to Badger a receipt for the money paid, it was on one of two printed blanks, which one he could not say. The court below found that the receipt was sent upon the blank which contained a reference to the Shanghai office. Whether it was

upon this form of receipt or upon the other one is of no consequence. In one of them it is stated "that the company shall incur no liability under the application until it has been received, approved by the resident board of the company at Shanghai, and a policy issued thereon by the resident board, and the full premium has actually been paid to and accepted by the company or its authorized agent during the lifetime and good health of the person upon whose life the insurance is applied for. The company reserves the absolute right of disapproval of such application."

The other form contains the statement that "the company shall incur no liability under the application until it has been received, approved at the home office of the company, and a policy issued thereon." This is then followed by the words of the first form. Upon both of these forms are printed the words "conditional receipt."

It seems very clear that no liability was incurred by the company in this case. The judgment of the court below is accordingly affirmed, with the costs of this instance against the appellant.

After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court below for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and *Tracey, JJ.,* concur.

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